

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sidney T. Lewis, et al., :
Plaintiffs, :
v. : Case No. 2:07cv0005
United States of America, et al., : Judge Michael H. Watson
Defendants. :

OPINION AND ORDER

This matter is before the Court on the objection (Doc. 3) filed by the plaintiffs, Sidney T. Lewis and Yvonne Lewis, to the Magistrate Judge's Report and Recommendation (Doc. 2). Pursuant to an initial screening under 28 U.S.C. §1915, the Magistrate Judge recommended that the plaintiffs' complaint be dismissed for want of jurisdiction and for failing to state a claim upon which relief can be granted.

When objections are received to a Magistrate Judge's report and recommendation on a dispositive matter, the district judge "shall make a *de novo* determination of any portion of the magistrate judge's disposition to which specific written objection has been made...." Fed. R. Civ. P. 72(b). After review, the district judge "may accept, reject or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." *Id.*; see also 28 U.S.C. §636(b)(a)(B).

As to the jurisdictional issue, the Magistrate Judge determined that the only

statute listed in the plaintiffs' complaint that waives sovereign immunity and permits a private party to sue the United States is 28 U.S.C. §2409a. Plaintiffs do not appear to disagree with this determination. In their objection, plaintiffs assert that jurisdiction is authorized by 28 U.S.C. §1346(f) which provides that "[t]he district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States."

The problem with plaintiffs' assertion of jurisdiction is the absence of anything in their complaint or attached exhibits even to suggest that the United States has ever claimed, or presently claims, an interest in the real property located at 1910 Argyle Drive, Columbus, Ohio. The record indicates that title to this property lies in the Estate of Dorothy J. Davis and that proceedings to administer this estate are currently pending before the Franklin County Probate Court. The record further reflects the attempted private sale of this property by the administrator of Ms. Davis' estate. There is no mention of the defendant Department of Housing and Urban Development ("HUD") in the attached exhibits apart from the use of HUD settlement statements in connection with the attempted sale.

Plaintiffs' objection asserts that jurisdiction exists under §1346(f) because the defendants had a duty to disclaim their interest in the property. The Magistrate Judge properly found that the United States appears not to have any interest in the property and, therefore, this Court lacks jurisdiction over this matter. Under *de novo* review, the Court concludes that Plaintiffs' objection is without merit and finds no error in the Report and Recommendation. The Court, therefore, ADOPTS the Report and Recommendation. Accordingly, this action is hereby DISMISSED for lack of jurisdiction

and failing to state a claim upon which relief may be granted. The Clerk of Court is hereby ORDERED to remove this matter from the Court's active docket and to mail a copy of the complaint, the Report and Recommendation and this Opinion and Order to the Defendants.



Michael H. Watson
Michael H. Watson, Judge
United States District Court